

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2012-414-C**

**February 4, 2013**

IN RE:	Application of Zayo Group, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Interexchange (Including Exchange Access) Services throughout the State of South Carolina, and for Flexible and Alternative Regulations	) ) ) ) ) ) )	<b>SETTLEMENT AGREEMENT</b>
--------	--	---------------------------------	---------------------------------

This Settlement Agreement ("Settlement Agreement") is made by and among the South Carolina Office of Regulatory Staff ("ORS") and Zayo Group, LLC ("Zayo" or the "Company") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, on December 6, 2012, Zayo filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold and facilities-based local exchange and intrastate interexchange (including exchange access) telecommunications services throughout the State of South Carolina; (ii) flexible regulation for its local exchange telecommunications services consistent with the Public Service Commission of South Carolina ("Commission") Order No. 1998-165 in Docket No. 1997-467-C; (iii) alternative regulation of its interexchange services, consumer card services, operator services, and private line services consistent with Commission Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C, as modified by Commission Order No. 2001-997 in Docket No. 2000-407-C; and (iv) waiver of certain regulations of the Commission, specifically 26 S.C. Code Ann.

Regs. 103-610 (Supp. 2011) regarding location of records and 26 S.C. Code Ann. Regs. 103-611 (Supp. 2011) regarding use of the Federal Communications Commission's ("FCC") Uniform System of Accounts ("USOA");

WHEREAS, on December 12, 2012, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS on December 17, 2012, the Commission issued a Notice of Filing and Hearing and established a return date of December 27, 2012, for the filing of letters of protest or petitions to intervene and established a hearing date for the Application to be heard before a hearing examiner;

WHEREAS, on December 20, 2012, the Commission issued its Order No. 2012-946 by which the Commission appointed F. David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS, on January 14, 2013, Zayo pre-filed the direct testimony of Jill Sandford with the Commission;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical and managerial expertise of Zayo to provide the services requested in the Application;

WHEREAS, ORS has reviewed Zayo's financial statements filed as Exhibit C to the Application;

WHEREAS, ORS has calculated certain performance ratios based upon information provided by Zayo;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariff filed as Exhibit E of the Application;

WHEREAS, ORS has reviewed the pre-filed testimony of Jill Sandford;

WHEREAS, as a result of its investigation, ORS has determined that (a) Zayo intends to provide resold and facilities-based local exchange and intrastate interexchange (including exchange access) telecommunication services throughout the State of South Carolina; (b) the officers of Zayo possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, Zayo appears to have access to sufficient financial resources necessary to provide the services proposed in its Application; (d) Zayo's proposed tariff set forth in Exhibit E of its Application with the revisions by ORS, accepted by the Company, complies with Commission statutes and regulations; (e) the services provided by Zayo will meet the service standards required by the Commission; (f) the provision of services by Zayo will not adversely impact the availability of affordable services; (g) to the extent it is required to do so by the Commission, Zayo will participate in the support of universally available telephone service at affordable rates; and (h) the provision of services by Zayo will not adversely impact the public interest; and

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this Docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that Zayo's Application and Exhibits attached to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of Zayo's witness Jill Sandford without cross-examination by ORS;

3) The Company has submitted financial data, which was provided as Exhibit C to its Application, and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide resold and facilities-based local exchange and intrastate interexchange (including exchange access) telecommunication services within the state of South Carolina;

5) ORS does not oppose the Company's requests (a) for flexible regulation for its local telecommunications service offerings consistent with Commission Order No. 1998-165 in Docket No. 1997-467-C, such flexible regulation including, specifically, (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days and (b) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with the procedures described and set forth in Commission Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services of similarly regulated companies; (ii) removal of the maximum rate tariff requirements for Zayo's business services, private line, and customer network-type offerings, except in instances governed by Commission Order No. 2001-997, which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the

Commission; and (iv) grant Zayo the same treatment as similarly regulated companies in connection with any future relaxation of reporting requirements;

6) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. § 58-9-380 (Supp. 2011) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of Colorado, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver of S.C. Code Ann. § 58-4-55 (Supp. 2011) or § 58-9-1070 (Supp. 2011) by ORS. ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties in compliance with any state or federal regulation;

7) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the USOA. The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2011) provides that ORS may, in its

discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the Commission's jurisdiction and that ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs including but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

8) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of Zayo's reports filed with the Commission and provided to ORS;

9) The Company agrees to file with the Commission and ORS a completed authorized utility representative form within thirty (30) days of the Commission's order;

10) Zayo agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, of its underlying interexchange carriers and if the Company changes its underlying interexchange carriers;

11) Zayo agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

12) The Company agrees to file necessary financial information with the Commission and ORS for USF reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Zayo. The Parties agree that such reports shall be filed pursuant to ORS's instructions and that monies shall be remitted in accordance with the directions of ORS and the Commission's requirements;

13) In the event that the Company offers prepaid calling card services in the future, Zayo agrees that it shall post a surety bond in the amount of \$5,000 as required by the Commission;

14) In the event that the Company offers local and long distance services to end users, the Company agrees to comply with the verification regulations governing change of preferred carriers as established by FCC. In addition, in the event that the Company offers local and long distance services to end users, the Company agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 1995-658;

15) The Company agrees to comply with S.C. Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Zayo agrees to adhere to the FCC's Rule 47 C.F.R. §§ 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall

remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

16) The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation;

17) The Company agrees to file a final revised tariff with both ORS and the Commission within thirty (30) days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system;

18) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2011). S.C. Code Ann. § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

19) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its



adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

20) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

21) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;


22) This Settlement Agreement shall be interpreted according to South Carolina law; and

23) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email

signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

**[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]**

**Representing the South Carolina Office of Regulatory Staff**

A handwritten signature in cursive script, reading "Courtney Dare Edwards", is written over a horizontal line.

Courtney Dare Edwards, Esquire

**South Carolina Office of Regulatory Staff**

1401 Main Street, Suite 900

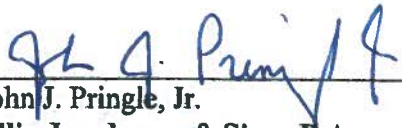
Columbia, South Carolina 29201

Tel.: (803) 737-8440

Fax: (803) 737-0895

Email: [cedwards@regstaff.sc.gov](mailto:cedwards@regstaff.sc.gov)

**Representing Zayo Group, LLC**

  
\_\_\_\_\_  
**John J. Pringle, Jr.**  
**Ellis, Lawhorne & Sims, P.A.**  
Post Office Box 2285  
Columbia, South Carolina 29202  
Tel.: (803) 343-1270  
Fax: (803) 799-8479  
Email: [jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)